IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.19304 of 2004
Date of Decision: 11.12.2007

Smt. Kaushalya Devi .....Petitioner

Vs.

State of Haryana and others ...Respondents

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CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : Mr.Arun Jain, Advocate for the petitioner.
Mr.Ashish Kapoor, Addl.A.G. Haryana for respondent no.1.
Ms.Raminder Gadhoke, Advocate for respondents no.2 and 3.

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RAJIVE BHALLA, J

The petitioner impugns the proceedings for acquisition and prays for the issuance of a writ of Certiorari for quashing the notifications, issued under Sections 4 an 6 of the Land Acquisition Act (hereinafter referred to as `the Act').

The petitioner alleges that she was a co-sharer in land measuring 39 Kanals 17 Marlas bearing Rectangle No.104, Killa No.30/1, 30/2. The joint land was partitioned by way of a family settlement dated 16.6.1990. In the partitioned proceedings, a strip of land shown as yellow in the Site Plan (Annexure P-7), bearing Rectangle Nos.104, Killa No.30/1/4 and 30/2/4 fell to the share of the petitioner. A mutation bearing No.5487 was entered in the revenue record on 29.12.1997 and consequently, the jamabandi for the year 1999-2000 reflected the petitioner as owner of the aforementioned land. The petitioner's co-sharer sold their land and the vendees constructed houses. The petitioner's land is

sandwiched on the north, south and east between these houses. The petitioner constructed her house 20 years ago. In the year 1983, the State of Haryana, issued a notification to acquire the land but the notification was allowed to lapse. The respondents have issued a notification under Section 4 dated 9.9.2002 proposing to acquire 328.11 acres of land for the public purpose for the development and utilisation of land, as a residential and commercial area.

The petitioner, filed objections, which were rejected, whereafter the State of Haryana, issued a declaration dated 18.9.2003, under Section 6 of the Act. After coming to know of the fact that her land and house had been included in the declaration under Section 6, the petitioner filed a representation before the Director, Urban Estate, Haryana, Sector 6, Panchkula, against the acquisition of her land and a house.

Counsel for the petitioner contends that the petitioner's land, shown as yellow in the Site Plan (Annexure P-7), is sandwiched on three sides by houses. Thus, it belies comprehension as to what public purpose would be served by acquiring this narrow strip of land measuring 500 ft. in length and 132 ft. in width. The public purpose, namely; development of a residential and commercial complex, would not be served, by acquiring this narrow strip of land. It is further submitted that though the total area, sought to be acquired by the impugned notification is about 400 acres, as the petitioner's land is surrounded by houses that have not been acquired, it would be impossible to use the petitioner's land for the purpose, referred to in the notification.

Another argument put forth by counsel for the petitioner is that the petitioner's house has been assigned No.612, Ward No.11, Sainik Pura,

Hanuman Nagar, Jind, by the Municipal Committee. She is paying house tax to the Municipal Committee, as is apparent from Annexures P-9 and P-10. It is, thus, asserted that as the petitioner's land and house would not serve any useful purpose and as the land is located in an already developed colony, the proceedings for acquisition being illegal and arbitrary should be quashed.

Counsel for the State of Haryana, on the other hand, submits that the petitioner's land was vacant, on the date of the notification under Section 4, except for an unauthorised katcha kotha (a small room) and a boundary wall both raised without the sanction of the Municipal Committee, Jind.. This small room and the boundary wall were raised, so as to escape acquisition of her land. The fact that the petitioner's land is located in a built up area and is alleged to be a narrow strip, cannot be asserted as a ground, for quashing the acquisition proceedings, as in the objections filed under Section 5-A of the Act, the petitioner has specifically asserted that her land has potential value for commercial as well as residential use and a part of it is an orchard, whereas the vacant land is in the shape of plots. The petitioner has also stated in her objections, that 200 trees, would have to be uprooted.

It is further submitted that there is no residential unit on the petitioner's land and the house tax has been paid, so as to create evidence in favour of the petitioner. The petitioner's contention that she has constructed a house and is paying house tax, is contrary to the averments in the objections filed under Section 5-A and appended with the present petition, as Annexure P-5.

We have heard learned counsel for the parties and perused the

impugned notifications, as also the paper book.

It is not denied by the respondents that the petitioner's land is surrounded by houses on three sides. However, in her objections dated 4.10.2002, filed under Section 5-A of the Act, the petitioner in paragraphs 8 and 9 of the objections, asserted the following facts :-

> "8. That the land of the objector proposed to be acquired has potential value for commercial as well as residential utility. The land is situated on the main road leading to Somnath Mandir from Jind City and is adjacent to the new vegetable market. Out of the land of the objector there is a orchard in the land of Killa no.30/2/4 and there is a tube well in this land. The remaining land is lying vacant in the shape of plots. The objector has constructed a house in this land and its municipal no. is 612/11. It is being assessed to house tax.
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> 9. That there are about 200 trees in the land and in case the land is acquired all these trees will have to be uprooted which is against the public policy and verdict to the Hon'ble Supreme Court of India. The State can not disturb the environment. The state policy is rather to plant more and more trees."

It is apparent from a perusal of the above extracted objections that the petitioner intended to use the land for commercial and residential purposes and had, therefore, carved out plots for the aforementioned purpose. Thus, the argument advanced that the petitioner's land could not be used, by the State, for commercial or residential purposes, is on the face of it incorrect. The petitioner, by asserting in her objections that she intends

to use the land by carving out plots, for residential and commercial purposes, admitted that the acquired land, could be used for residential or commercial purposes. The mere fact that the petitioner's land is surrounded on three sides by houses, is insufficient to hold that the proceedings for acquisition are arbitrary.

As regards the plea that the petitioner has constructed a house, we are constrained to hold that facts necessary to establish the existence of a house have not been pleaded. The petitioner has failed to place before us any particulars of the house, its dimensions, the building plan sanctioned or otherwise, electricity bills etc. attributes that are essential evidence to establish the existence of a house. It appears that in order to avoid acquisition, the petitioner constructed a temporary room and raised a boundary wall and in order to create evidence, began to pay house tax. Mere existence of a temporary room and a boundary wall, would not render the acquisition proceedings arbitrary or illegal, so as to warrant their quashing. Consequently, as the petitioner has failed to establish the existence of her house, and as the impugned notifications, do not suffer from any error of law, the contentions raised by counsel for the petitioner do not merit acceptance.

In view of what has been stated above, the present petition is dismissed, with no order as to costs.

(RAJIVE BHALLA)
JUDGE

11.12.2007
GS

(UMA NATH SINGH)
JUDGE